

FILED
SEP 05 2006

DEPARTMENT OF REAL ESTATE

By *Juan Quintana*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-8479 SF
ERIC CHARLES FOLLESTAD,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On December 3, 2003, a Decision was rendered herein denying Respondent's application for a real estate broker license, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on December 26, 2003, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On January 9, 2006, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license.

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1 I have considered Respondent's Petition and the
2 evidence submitted in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 Petition for removal of restrictions is granted and that a real
10 estate broker license be issued to Respondent if, within nine (9)
11 months from the date of this order, Respondent shall:

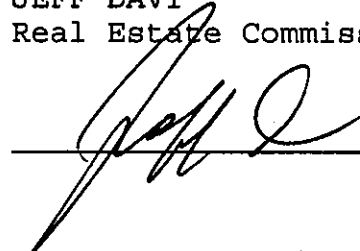
12 (a) Submit a completed application and pay the
13 appropriate fee for a real estate broker license, and

14 (b) Submit evidence of having taken and successfully
15 completed the continuing education requirements of Article 2.5 of
16 Chapter 3 of the Real Estate Law for renewal of a real estate
17 license.

18 This Order shall become effective immediately.

19 IT IS SO ORDERED

20 JEFF DAVI
21 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 05 2003

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
ERIC CHARLES FOLLESTAD,)
Respondent.)

NO. H-8479 SF/ Shelly El
N2003080633

DECISION

The Proposed Decision dated November 5, 2003, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on December 26, 2003.

IT IS SO ORDERED December 3, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

ERIC CHARLES FOLLESTAD,

Respondent.

Case No. H-8479 SF

OAH No. N2003080633

PROPOSED DECISION

This matter was consolidated for hearing with the accusation against Eric Charles Follestad (Case No. H-8480 SF; OAH Case No. N2003080634). Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard these matters in Oakland, California on October 1, 2003.

Michael B. Rich, Counsel, represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

George Silvestre, Jr., Esq., 250 Bel Marin Keys Boulevard, Suite F-200, Novato, California 94949, represented respondent Eric Charles Follestad who was present.

The matter was submitted on October 1, 2003.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made and filed the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California, Department of Real Estate (Department).

2. On or about January 23, 2003, respondent Eric Charles Follestad filed with the Department an application for a real estate broker license.

3. On or about October 24, 1996, respondent was convicted in the Municipal Court of the State of California, County of San Diego, on his plea of nolo contendere to a violation of Vehicle Code section 23103(a), reckless driving, and Vehicle Code section 20002(a), leaving the scene of an accident causing property damage without providing identity to the owner. Each offense was a misdemeanor.

Respondent was sentenced to 90 days in jail. Execution of sentence was suspended and respondent was placed on summary probation for three years. He was ordered to complete a first offenders' program and to pay various fines and assessments. Respondent completed his probation in October of 1999.

4. Respondent was 24 years old at the time of the offenses. Respondent had completed the Naval Academy and was stationed in San Diego. Respondent attended a concert where he drank too much alcohol. When driving back to the base he lost control of the vehicle, it spun and hit a parked car. Frightened, respondent kept on driving.

5. Each of the offenses involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

6. Respondent admits the offenses and admits that he had a problem with the use of alcohol. The court permitted to him to attend a Navy rehabilitation program in lieu of the first offender program. Respondent completed the comprehensive four week program where he was introduced to the teaching of Alcoholics Anonymous (AA). It was not for about another year that respondent came to understand that he did not "work well" with alcohol.

Respondent has been sober since May 20, 1997. He attends AA meetings twice a week and has a sponsor. His wife is a member of the program.

7. Respondent was honorably discharged from the Navy in January of 1998.

8. In August of 1999, respondent filed an application with the Secretary of State for the State of California for an appointment as a notary public. The Secretary of State filed a statement of issues for which respondent did not file a notice of defense. On April 19, 2002, in Agency No. 2000-02045AD, the Secretary of State issued a default decision denying respondent's application for a notary public commission.

Respondent's application was denied for two reasons. A violation of Government Code section 8214.1(a) was found for a substantial and material misstatement or omission in the application. The second basis for the denial was a violation of Government Code section 8214(b), the conviction of lesser offenses involving moral turpitude or of a nature incompatible with the duties of a notary public.

9. The application for a notary commission asks the applicant whether he or she has ever been convicted by any court of a felony or a misdemeanor. Respondent answered the question "no," thereby failing to disclose his 1996 misdemeanor convictions set forth in Factual Finding 3. Respondent answered no because the application said he could omit a traffic infraction and that is what he thought he had - traffic

infractions. Respondent did not take any steps to confirm the nature of his conviction before completing the application.

Respondent elected not to contest the statement of issues because he did not have the resources to do so and he determined that he would not be able to use a notary commission to sign his own documents. In short, it was not worth it to fight it.

10. It was not established that the manner in which respondent completed his application for a notary public commission amounted to fraud or dishonest dealing.

11. Respondent has been licensed as a life agent by the Department of Insurance since 1996. The license has never been disciplined. Respondent also holds a number of licenses (series 7, 24, 63, 65, 9 and 10) through the National Association of Securities Dealers (NASD). None of these licenses has ever been disciplined.

12. Respondent is 30 years old and is recently married.

Respondent is currently employed as an Investment Advisor with AIG Valic. Previously he worked as a Trading Associate with Bank of America Securities (January 2000 to December 2003), a Financial Associate with Citigroup (January 1999 to December 2000), and as a Financial Representative with WMA Securities (June 1996 to May 1998).

Respondent is in his second year of an MBA program at the University of San Francisco. He expects to complete the program in March 2004.

13. Harold Dean Valceshini has been a licensee of the Department for 48 years. He has known respondent for approximately 15 years. In his opinion respondent is forthright, professional and ethical.

14. Respondent is not currently using his real estate license. He seeks to obtain a broker's license so that he may diversify his employment options.

LEGAL CONCLUSIONS

1. Under Business and Professions Code sections 480(a) and 10177(b) the Commissioner may deny an application for a real estate license if the applicant has been convicted of a felony or a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. An offense is deemed to be substantially related to the qualifications, functions or duties of a real estate licensee if it involves the doing of an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) By reason of the matters set forth in Factual Findings 3 through 5, respondent has been convicted of two misdemeanor offenses that involve moral

turpitude and that are substantially related to the qualifications, functions or duties of a real estate licensee. Cause to deny respondent's application exists under Business and Professions Code sections 480(a) and 101077(b).

2. Under subdivision (f) of Business and Professions Code section 10177, the Commissioner may deny an application for a real estate license if the applicant has had a license denied by another agency of this state for acts that if done by a real estate licensee would be grounds for suspension or revocation of a California real estate license. The making of a material omission on an application for licensure as a real estate licensee is grounds to suspend or revoke a real estate license under subdivision (a) of section 10177. Cause therefore exists to deny respondent's application under Business and Professions Code section 10177, subdivision (f).

3. Under subdivision (j) of Business and Professions Code section 10177 the Commissioner may suspend or revoke the license and licensing rights of a licensee who has engaged in any conduct that constitutes fraud or dishonest dealing. By reason of the matters set forth in Factual Finding 10, it was not established that respondent committed an act of fraud or dishonest dealing. Cause does not exist to deny respondent's application under subdivision (j) of Business and Professions Code section 10177.

4. All criteria set forth in section 2911 of title 10 of the California Code of Regulations have been considered. More than seven years have passed since respondent's convictions. He successfully completed probation. Respondent has abstained from the use of alcohol for six years. He has a stable family life and has been gainfully employed. He is pursuing an MBA degree. Respondent has therefore demonstrated rehabilitation from his criminal convictions.

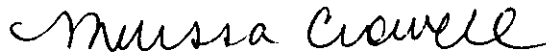
The manner in which respondent completed his application for a notary public commission is of concern. But that act occurred more than four years ago. Nothing respondent has done since that time evidences that he lacks the honesty or integrity required of real estate licensees. And, respondent fully disclosed his conviction on his application for licensure with the Department. The public will be adequately protected by the following order.

ORDER

Respondent's application for a real estate broker license is denied by reason of Legal Conclusion 2; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to the respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of the Business and Professions Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - (b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

DATED: November 5, 2003



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
AUG 27 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ERIC CHARLES FOLLESTAD,

Case No. H-8479 SF
(Consolidated with H-8480 SF)

OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--OCTOBER 1, 2003, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 27, 2003

By

Michael B. Rich
MICHAEL B. RICH, J.E. Counsel

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
JUL 31 2003

DEPARTMENT OF REAL ESTATE

By Jean R. Smith

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ERIC CHARLES FOLLESTAD,)
13 Respondent.)

No. H- 8479 SF

STATEMENT OF ISSUES

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against ERIC CHARLES FOLLESTAD (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 Respondent made application to the Department of "Real
21 Estate of the State of California for a real estate broker
22 license on or about January 23, 2003.

23 II

24 Complainant, LES R. BETTENCOURT, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.

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1 III

2 On April 19, 2002, before the Secretary of State for
3 the State of California, Agency No. 2000-02045AD, Respondent's
4 application for a notary public license was denied for violations
5 of Government Code Section 8214.1(a) (Substantial and material
6 misstatement or omission in the application submitted) and
7 Section 8214(b) (Conviction of a lesser offenses involving moral
8 turpitude or of a nature incompatible with the duties of a notary
9 public) which was conduct that would warrant denial of an
10 application for a real estate license pursuant to California
11 Business and Professions Code Section 10177(f) and (j).

12 IV

13 On or about October 24, 1996, in the Municipal Court,
14 County of San Diego, Respondent was convicted of a violation of
15 California Vehicle Code Sections 23103(a) (Reckless driving) and
16 20002(a) of the California Vehicle Code (Leave scene of accident
17 causing property damage without providing identity to owner of
18 property), crimes involving moral turpitude which bear a
19 substantial relationship under Section 2910, Title 10, California
20 Code of Regulations, to the qualifications, functions, or duties
21 of a real estate licensee.

22 V

23 Respondent's acts, which resulted in the proceedings
24 described in Paragraph III, are acts, which if done by a real
25 estate licensee would be grounds for his suspension or revocation
26 of a California Real Estate License.

27 ///

1 VI

2 The denial of Respondent's notary public license as
3 described in Paragraph III, above, constitutes cause for denial
4 of Respondent's application for a real estate license under
5 Sections 480(a)(3) and 10177(f) and (j) of the Business and
6 Professions Code of the State of California.

7 VII

8 The crimes of which Respondent was convicted, as
9 alleged in Paragraph IV, individually and/or collectively,
10 constitute cause for denial of Respondent's application for a
11 real estate license under Sections 480(a) and/or 10177(b) of the
12 California Business and Professions Code.

13 WHEREFORE, the Complainant prays that the above-
14 entitled matter be set for hearing and, upon proof of the charges
15 contained herein, that the Commissioner refuse to authorize the
16 issuance of, and deny the issuance of, a real estate salesperson
17 license to Respondent, and for such other and further relief as
18 may be proper under other provisions of law.

19
20 
21 LES R. BETTENCOURT
Deputy Real Estate Commissioner

22 Dated at Oakland, California,
23 this 18th day of July 2003.